

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIRTIVA CORPORATION,

Plaintiff,

-against-

FREEWHEEL MEDIA, INC.,

Defendant.

Civil Action No. 1:21-mc-00830-KPF

Underlying case:

United States District Court, Eastern District of
Texas (Case No. 2:21-cv-00111-JRG-RSP)

**DECLARATION OF PHILIP T. SHENG IN SUPPORT OF RESPONDENT
FREEWHEEL MEDIA, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO
FIRTIVA CORPORATION'S RULE 45 MOTION TO COMPEL**

I, Philip T. Sheng, pursuant to 28 U.S.C. § 1746, hereby declares:

I am an attorney with the law firm Davis Polk & Wardwell LLP admitted to practice before this Court *pro hac vice* and am counsel for defendant Freewheel Media, Inc. in the above-captioned matter. I submit this declaration in support of Freewheel Media, Inc.'s Memorandum of Law in Opposition to Firtiva Corporation's Rule 45 Motion to Compel.

1. On November 18, 2021, counsel for FreeWheel Media, Inc. ("FreeWheel") and Firtiva Corporation ("Firtiva") met and conferred by teleconference to discuss Firtiva's October 19, 2021 Subpoena to Produce Documents, Information, or Objects or To Permit Inspection Of Premises In a Civil Action (the "Subpoena"). Firtiva's counsel failed to explain with any particularity how FreeWheel's source code is relevant to its infringement claims against Funimation. While counsel for FreeWheel indicated a willingness to discuss the possible production of certain non-source code documents if Firtiva could explain what it needed to know about FreeWheel's system and why, counsel for Firtiva refused to engage in such discussions and asserted that Firtiva is entitled to all of the requested FreeWheel source code. Counsel for Firtiva asserted that any concerns FreeWheel has regarding the production of source code are

addressed by the Protective Order, but they did not propose any amendments to address the concerns with that order that FreeWheel had raised in the November 5, 2021 email referenced below and attached as Exhibit C to this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of a webpage entitled “About Us | Funimation,” *available at* <https://www.funimation.com/about-us/> (last accessed on December 6, 2021).

3. Attached hereto as Exhibit B is a true and correct copy of a webpage entitled “Subscribe | Funimation,” *available at* <https://www.funimation.com/subscribe/> (last accessed on December 6, 2021).

4. Attached hereto as Exhibit C is a true and correct copy of email correspondence from Philip Sheng to Brian Landry dated November 5, 2021.

5. Attached hereto as Exhibit D is a true and correct copy of Firtiva’s Infringement Contentions against Funimation in the Eastern District of Texas that were attached as an exhibit to Firtiva’s Subpoena to FreeWheel.

6. Attached hereto as Exhibit E is a true and correct copy of the Protective Order entered in the litigation between Firtiva and Funimation in the Eastern District of Texas that was attached as an exhibit to Firtiva’s Subpoena to FreeWheel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 6, 2021
Menlo Park, California

/s/ Philip T. Sheng
Philip T. Sheng